IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 728 OF 1999

Pansingh Mahasingh Thakur ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri N.S. Singh advocate for the appellant.
Shri B.R.Patil PP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 3RD NOVEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the Additional Sessions Judge, Gr. Bombay in Sessions Case No. 240 of 1997 under sections 302 of IPC on 23-9-1999 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story as it emerges on reappreciation of evidence stated briefly is that around 8.30 p.m. on 5th November 1996 one Prakash Ubhale was assaulted by three persons near Vashi Naka, Chembur. Crime No.225/96 was registered in the RCF police station and on investigation the appellant was arrested for the assault. After completing the investigation, the appellant was convicted as aforesaid by the learned trial Judge for murdering Prakash Ubhale.

4. The prosecution has examined 11 witnesses to prove its case. There are atleast two eye witnesses who deposed to what has happened. They narrated the entire incident and tell the court the manner in which the assault took place. According to P.w.1 Laxmi, she heard cry outside her house and saw that her brother Prakash was being beaten by three persons whom she has named. She described the manner in whcih they assaulted Prakash. She has stated all the three named persons were beating her brother Prakash with fist blows and kicks. When she tried to mediate, she and her husband were threatened by the assailants and therefore she resisted from intervening in the quarrel, and after thrashing out the victim Prakash, the accused left.

5. To this effect is the deposition of P.w.2 who is the husband of P.w.1. There is no question of recovery of any weapon as none was used and the case of the prosecution is that beating by the accused persons was so heavy that the victim died because of that. It is pertinent to note that the learned trial Judge convicted only accused no.1 under section 302 IPC and accused nos.2 and 3 being convicted under section 323 IPC to suffer R.I. for one month. They have already suffered the same and there is therefore no appeal by them. The only reason that the present appellant was sentenced to life imprisonment under section 302 IPC was that the eye witnesses saw the accused i.e. present appellant banging the head of the victim on the floor. It is an admitted position that the entire occurence is on slums around Mankhurd. There are no permanent structures in the area and the entire area is zopadappati. There is no evidence that the head was thrashed or crashed on a stone and merely because the head was banged on the floor, it cannot be inferred therefrom that the intention was to cause death, unless it is established that the floor was of some concrete nature.

6. There is no reason why the entire evidence as led

by the prosecution be not believed. On our re-appreciation, we have found that the evidence is cogent and reliable and no error was committed by the learned Judge in accepting the same. We confirm the finding of the learned Judge that the accused were responsible for homicidal death of the victim. We however disagree with the learned trial Judge that the accused/appellant is guilty of murder, merely because he banged the head of the victim on the floor. There is no evidence to hold that the floor was of anything concrete in nature and therefore had the capacity to break the skull. In any event, there is no evidence to show that the accused persons had intention to cause death of the victim. We are therefore unable to accept the conclusion of the learned trial Judge that the accused/appellant was guilty of murder.

7. However the entire evidence thus indicate the manner in which the assault was led by accused no.1 and the manner in which he banged the head of the victim on the fllor which may be even on earth. The knowledge that such banging may result in death or knowledge of such banging likely to result in death, can be inferred in accused/appellant. In our opinion, he is therefore liable to be held guilty of offence under section 304-II IPC.

8. In the result, therefore, the appeal is partly allowed. Conviction and sentence under section 302 IPC is set aside. Instead the accused is convicted under section 304-II IPC and is sentenced to suffer imprisonment for a period of 8 years. On completion of that period, which would be on 6-11-2004, the accused is liable to be released, if not otherwise required. The appeal accordingly is disposed of.

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